

REMARKS

Claims 4-29 are currently pending in the application. No amendment have been made by this response. Rather, Applicant has merely complied with a requirement to file a terminal disclaimer in order to overcome a rejection under the Judicially created doctrine of Double Patenting. Applicants request reconsideration of the application in light of the following remarks.

Indication of Condition for Allowance

Applicant wishes to thank the Examiner for the indication of condition for allowance for the above referenced application but for one remaining formal matter, that of filing a terminal disclaimer. Applicants believe that all formal matter has been resolved by this response, that the application is in condition for allowance, and respectfully request the same.

Double Patenting Rejection

As acknowledged by the Examiner, the provisional rejection of claims 1-29 based on the provisional obviousness-type double patenting rejection in view of copending application number 09/578,001 has been overcome.

Claims 1-29 also stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4-6 of U.S. Patent No. 6,221,145. It appears that by an oversight the terminal disclaimer was omitted in the response to the Office action dated May 21, 2004, although the terminal disclaimer was referred to in the remarks of that response. Therefore, the terminal disclaimer is being filed herewith to overcome the remaining double patenting rejection. Although Applicant strongly disagrees with the Examiner's assertion that transport of pre-paint components to a point of sale prior to mixing the components is "so notoriously well known as to preclude the citation of a reference," Applicant elects to expedite the prosecution of the present application by filing a terminal disclaimer to obviate the double patenting rejection in compliance with 37 CFR §1.321 (b) and (c). Applicants' filing of the terminal disclaimer should not be construed as acquiescence of the Examiner's double patenting or obviousness-type double patenting rejections. Attached is the terminal disclaimer and accompanying fee.

Confirmation of Allowed Claims

Applicants wish to thank the Examiner for his confirmation of the patentable subject matter of claims 4-29.

Regarding Doctrine of Equivalents

Applicants hereby declare that any amendments herein that are not specifically made for the purpose of patentability are made for other purposes, such as clarification, and that no such changes shall be construed as limiting the scope of the claims or the application of the Doctrine of Equivalents.

CONCLUSION

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.


It is requested that a one-month extension of time be granted for the filing of this response, and the appropriate extension filing fee of \$60.00 is enclosed herewith.

The amendments herein added no new claims, resulting in no fees due. However, a terminal disclaimer requiring a fee of \$65.00 has been submitted herewith. A check in the amount of \$65.00 has been included herewith for this purpose.

If any fees, including extension of time fees or additional claims fees, are due as a result of this response, please charge Deposit Account No. 19-0513. This authorization is intended to act as a constructive petition for an extension of time, should an extension of time be needed as a result of this response. The examiner is invited to telephone the undersigned if this would in any way advance the prosecution of this case.

Respectfully submitted,

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